



competition commission
south africa

Media Statement

For Immediate Release

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COMMISSION RELEASES FINAL REPORT FOR ONLINE INTERMEDIATION PLATFORMS MARKET INQUIRY

Today Monday, 31 July 2023, Competition Commissioner Doris Tshepe handed over the final report and decision of the Online Intermediation Platforms Market Inquiry (OIPMI) to honourable Minister of Trade, Industry and Competition Ebrahim Patel during an official ceremony at the **dtic** campus in Tshwane. The report includes a raft of remedial actions that will provide greater visibility for smaller South African platforms, enable more intense platform competition, and level the playing field for small businesses selling through online platforms. Importantly, the remedial actions will provide a more inclusive digital economy for platforms, businesses, and consumers.

In her opening remarks, Commissioner Tshepe said: “The completion of this market inquiry is a momentous occasion in itself, particularly in this case as it is the first inquiry under the amended legislation and the first to delve into the increasingly important digital economy.”

The report is a culmination of almost two years of investigations into local and international business-to-consumer (B2C) online platform markets and identifies features that adversely affect competition in these markets. It includes a set of remedial actions that platforms, and some businesses, are required to implement to remedy the identified market features that adversely affect competition. This includes outcomes stemming from the business models utilised by digital platforms, rather than necessarily deliberate efforts to stifle competition. In addition, recommendations have been made to the Department of Trade, Industry, and Competition on entrepreneurial funding in relation to Historically Disadvantaged Persons (HDPs).

Minister Patel applauded the OIPMI team led by Chief Economist James Hodge as the Chairperson of the Inquiry, for their “enormous effort and quality of work” and said the government should consider a comprehensive response to the recommendations made by the inquiry. He said the inquiry is a first on many fronts including that it is the first such inquiry undertaken by a developing African country.

The OIPMI commenced in May 2021 to assess whether features in B2C online platform markets adversely affected competition between platforms and between businesses using these platforms, including by Small and Medium Enterprises (SMEs) and HDPs in terms of section 43B(1)(a) of the Competition Act No. 89 of

1998 (as amended). The B2C platforms include eCommerce, online travel agencies, food delivery, app stores, and property/automotive classifieds, along with the role of Google Search in shaping B2C platform competition. These types of platforms were selected as they affect a wide range of business activities throughout the country's economy.

The platforms required to implement remedial actions are leading platforms such as Google, Booking.com, Takealot, Apple, Uber Eats, Mr D Food, Property24, Private Property, AutoTrader, and Cars.co.za. Other businesses include national restaurant chains, Bolt Food and Prop Data.

The Inquiry engaged in extensive evidence-gathering, held public hearings in November 2021 and in-camera hearings in February 2022, along with more evidence-gathering, before releasing its Provisional Report in July 2022. Since then, the Inquiry has been involved in further evidence-gathering and in-depth engagements with all relevant stakeholders on the veracity of the provisional findings, reasonable and practical remedial actions, and comprehensive solutions required to address any identified harm.

The Inquiry has also released a summary of findings and remedial actions along with the report to aid the public and businesses that list on these platforms to understand the implications of the findings and remedial actions, and how those remedial actions should impact them.

Some of the **findings** (see more below) include that **Google Search** is a critical gateway to consumers for all platforms and its business model of paid search alongside free results favours large established platforms. With regards to travel, **Booking.com's** restrictions on hotel pricing on other online channels limits competition and creates a dependency that is used to extract higher commission fees. In terms of eCommerce, **Takealot** faces a conflict of interest on its site as its retail division competes with marketplace sellers leading to behaviour that has disadvantaged sellers. **Google Play** and **Apple App** stores are unconstrained in the commission fees they charge app developers, and their global business model limits the curation and visibility of SA-paid apps. Another finding is that competitors to **Uber Eats** and **Mr D Food** are disadvantaged by the lack of transparency on menu surcharges across platforms and restrictions placed on franchisees by national restaurant chains. Competitors to **Property24** and **Private Property** are hindered by the lack of interoperability in providing property listings, and small estate agents and automotive dealers are disadvantaged by the discriminatory pricing of **Property24**, **AutoTrader**, and **Cars.co.za** that favours large national groups.

To address these findings, the OIPMI has included **remedial actions** (see more below) which include **Google** providing a South African badge and search filter to aid consumer support for SA platforms and introducing a new platform sites unit to display smaller SA platforms relevant to the search, along with training and R180m in advertising credits. Google is to implement in SA changes it makes in Europe to address self-preferencing. **Booking.com** is required to remove the restrictive pricing clauses from its contracts, and **Takealot** is to segregate its retail division from its marketplace operations, preventing its retail services from accessing seller data and unilaterally stopping sellers from competing for certain brands. **Google Play** and **Apple App** stores are to stop preventing apps from directing consumers to pay

on the app's website and to ensure continued free use by consumers of content purchased from that website, along with local app curation. **Uber Eats** and **Mr D Food** are required to inform consumers that they charge restaurants a commission fee and that menu items may be priced differently to takeaway menus, and restaurant chains may not unreasonably restrict the choice of food delivery service by franchisees. Property classifieds are required to put in place the ability of estate agencies to share their listings with other classifieds, and **Property24**, **AutoTrader**, and **Cars.co.za** is required to substantially reduce the price of listings to small and medium independent agencies and dealers.

The remedial actions should provide the following benefits to platforms, businesses, and consumers: greater visibility and opportunity for smaller South African platforms; enable more intense platform competition; level the playing field for small businesses selling through these platforms; and provide a more inclusive digital economy.

All platforms will be given time to implement the remedial actions depending on the complexity of the remedy. Annexure 10 of the Final Report and Summary contains the detailed Remedial Action decisions with the specific requirements and phase-in periods.

The full OIPMI report can be accessed at <https://www.compcom.co.za/online-intermediation-platforms-market-inquiry-final-report-launch/>

[ENDS]

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OIPMI FINDINGS

- **Google Search** is a critical gateway to consumers for all platform categories, and its business model of paid search alongside free results favours large established platforms. In addition, Google self-preferences its own shopping and travel units on its search results page;
- **Travel:** Booking.com's restriction on hotels and other establishments from pricing lower on their own website or on other travel platforms both limits competition from these sources and also creates a dependency that is used to extract higher commission fees from hotels;

- **eCommerce:** Takealot faces a conflict of interest on its site as its own retail division competes with other sellers, and this has led to behaviour that has disadvantaged sellers in a number of ways;
- **App stores:** Google Play and Apple App Store are unconstrained in the commission fees they charge paid app developers, and their global business model limits the curation and visibility of local SA paid app developers;
- **Food delivery:** Local delivery platforms competing with Uber Eats and Mr D Food have faced restrictions on restaurant franchisees listing with them and are disadvantaged by the lack of transparency on menu surcharges on and across platforms. This hurts consumers too. Independent restaurants lack negotiating power with Uber Eats and Mr D Food resulting in higher commission fees than the restaurant chains, forcing them to push up prices to consumers, and less choice in trading off service levels for fees.
- **Online classifieds:** A raft of features in property classifieds has restricted choice to Property24 and Private Property. These include a lack of interoperability in feeding agency for-sale listings, multi-year contracts that lock-in large estate agencies, and overt support for Private Property by the industry association, including shareholding by the major estate agencies. In both property and automotive classifieds, there is extremely high pricing for small agents or dealers relative to the larger ones, which limits their marketing budget and visibility online.
- **Across all South African platforms:** A lack of transparency in the labelling of advertised listings from businesses that pay to appear at the top or get a boost in their ranking on the search results not only harms consumers but also those SMEs and black businesses that cannot afford to pay for prime position.
- **Across all these platform categories:** There is a distinct lack of participation by black South Africans both at the platform level and amongst the businesses that list on the platforms. Black entrepreneurs do not have ready access to venture capital domestically to launch alternative platforms. The established platform's business model then favours larger, more established businesses rather than those that were historically disadvantaged.

OIPMI RECOMMENDATIONS

- **Google** to provide more free and paid result exposure for smaller SA platforms, including introducing a new platform sites unit to display smaller SA platforms relevant to the search, and R180m in advertising credits. A further R150m in training, product support, and other measures for SME and black-owned online firms, along with an SA flag identifier and search filter to aid consumers to identify and support local platforms. Google must also cease self-preferencing and is to implement in SA measures taken in Europe to comply with similar provisions in the Digital Markets Act;
- **Booking.com** is required to remove the restrictive pricing clauses from its contracts, allowing hotels and other establishments to price as they wish across different online channels, including their own;

- **Takealot** is to segregate its retail division from its marketplace operations, preventing its retail services from accessing marketplace seller data and unilaterally stopping marketplace sellers from competing for certain brands. Takealot to introduce a rapid dispute resolution mechanism and to extend the employee code of conduct and independent complaints channel to make unfairly harming marketplace sellers a conduct offence;
- **Google Play and Apple App** stores to stop preventing apps from directing consumers to pay on the app's own website, and to ensure continued free use by consumers of content purchased from that website. Implementation in SA of measures taken in Europe to comply with similar provisions in the Digital Markets Act, including fair and reasonable pricing, will constitute compliance. Google and Apple must also provide a South African curation of apps on their app stores and advertising credits to SA app developers;
- In food delivery, **restaurant chains** are no longer allowed to restrict their franchisees from listing on local delivery platforms of their choice. **Uber Eats** and **Mr D Food** must also offer lower commission fees and improved value for independent restaurants. Uber Eats must implement a standardised tiered commission fee structure for independent restaurants, providing a choice of different, and lower, commission fees associated with different levels of service and ongoing costs. This is something that Uber Eats has already started to experiment with. Mr D Food must achieve the same outcome through implementing a promotional rebate on the commission fee which can be used for discounts and promotions on Mr D Food, along with advertising credits. They must both also inform consumers periodically that pricing may differ from in-restaurant menus due to those commission fees;
- In property classifieds, **Property24** and **Private Property** must provide interoperability at no fee for estate agents to feed listings to other platforms, and not charge for incoming listings either. There is a recommendation to the Competition Tribunal for the national agencies to divest their shareholding in Private Property, and Rebosa has already withdrawn its endorsement of one platform only. All the top property and automotive platforms must substantially reduce their prices to SME agents and dealers to a level within 10-15% of that of larger agents and dealers;
- All the leading platforms cited above **must introduce an HDP programme** that provides black-owned businesses a package of assistance to onboard and promote visibility on their platforms. This varies across platforms but typically includes free and personalised onboard assistance, a fee waiver for a period to lower onboarding costs, and either a reduced price for promotion or advertising credits to use in promoting themselves on the platform;
- South African platforms **must label all listings that have paid for a position** or boost in ranking position as 'promoted', 'sponsored' or 'Ad', in line with the recently changed Advertising Regulatory Board's Code of Advertising Practice;
- A recommendation to the government for an **HDP Startup Fund to support black digital entrepreneurs**, including support for incubators, accelerators, and venture capital funds on a

mandate basis, and to offer support through existing SME programmes for black businesses to list on online platforms.

REMEDIAL ACTIONS

The remedial actions should provide the following benefits to platforms, businesses, and consumers:

- **Greater visibility and opportunity for smaller South African platforms** to acquire customers through Google Search, enabling growth and greater platform competition with larger, sometimes global, rivals;
- **Enabling more intense platform competition** in each of these categories, which in turn will offer businesses that list on the platforms and consumers more choice and innovation. This should result in lower prices for the businesses listing on the platforms, and for consumers too where they currently pay for the service;
- **Providing a level playing field for small businesses selling through these platforms**, including fairer pricing and opportunities for gaining visibility and customer acquisition relative to the large national businesses they compete with;
- **Providing a more inclusive digital economy** by overcoming impediments for participation and fair competition by black-owned South African businesses on online platforms and funding opportunities for black entrepreneurs.